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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/832,897	04/12/2001	Kenichi Ueyama	205733US0	1680
22850	7590	10/20/2005	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			GOLLAMUDI, SHARMILA S	
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1616

DATE MAILED: 10/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/832,897	Applicant(s) UEYAMA ET AL.	
	Examiner Sharmila S. Gollamudi	Art Unit 1616	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 12 September 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-5, 11, 16, 17, 19, 20 and 22-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 11, 16, 17, 19, 20 and 22-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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### DETAILED ACTION

Receipt of Request for Continued Examination filed 9/12/05 is acknowledged. Claims **1-5, 11, 16-17, 19-20, and 22-30** are pending in this application. Claims 6-10, 12-15, 18, and 21 stand cancelled.

#### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Claim 1 recites the claim language **consisting essentially of** an 1) oil agent in the amount of 0.5-25%, 2) a solvent, and 3) water in the amount of 0-15%. Thus, the consisting essentially of language denotes that the oil and solvent are critical agents and would most likely constitute majority of the composition. For instance, the composition can have a 15% as the maximum weight percent of water and 25% as the maximum weight percent of an oil agent. Thus, claim 1 provides for water and oil in a total weight percent of 40% and allowing for 60% of a solvent and minor components that do not effect the basic and novel properties of the composition.

However, claim 11 recites that the solvent in a weight percent of 3-99%. The scope of claim 11 provides the solvent in an amount of 3% and renders the claim language indefinite. If the claimed composition had the maximum weight percent of oil (25%) and water (15%) as claimed by the independent claim, and 3% solvent as claimed by dependent claim 11, the composition only contains 43% of the required components and the remainder consists of

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components other than water, oil, and the solvent. The examiner notes that “consisting essentially language” occupies a middle ground between “comprising” and “consisting” and the scope is open to components that do no materially effect the basic and novel composition and further the examiner notes page 4 wherein the specification discloses additives that do not effect the composition. However, the examiner also points out that additives that constitute over 50% of the composition would render an entirely different composition than the “basic and novel” composition claimed in the independent claim. Therefore, it is unclear what is in the remainder of the composition since the critical components of the composition, i.e. the solvent, the oil agent, and the water are in an amount of less than 50%. Further clarification is requested.

***Response to Arguments***

Applicant argues that the amendments of 9/12/05 obviate the 112, second paragraph rejection.

Applicant's arguments filed 9/12/05 have been fully considered but they are not persuasive. The examiner notes that claims 12-14, which were rejected under indefiniteness, have been cancelled; thus this argument is moot with regard to claims 12-14. However, claim 11 is still rejected under indefiniteness. The critical components as recited in the independent claim is A) 0.5-25% oil, B) 0-15% water, and a solvent. Hence, the majority of the composition must be, which is also as argued by applicant, the solvent and oil. However, the dependent claim 11 is inconsistent with the scope of the independent claims. For instance, dependent claim 11 is directed to a hair treatment composition containing 3 to 99% solvent. If the claimed composition had the maximum weight percent of oil (25%) and water (15%) as claimed by the independent claim, and 3% solvent as claimed by dependent claim 11, the composition only contains 43% of

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the required components and the remainder consists of components other than water, oil, and the solvent; thus rendering a markedly different composition than the “basic and novel” composition claimed in the independent claim. Therefore, the dependent claim is inconsistent with the scope of the independent claim.

***Claim Rejections - 35 USC § 102***

The rejection of claims 1, 11-13, 15, 20-21, 23, 28 under 35 U.S.C. 102(b) as being anticipated by Matsunaga et al (4,495,173) is withdrawn in view of the amendment of 9/12/05.

The rejection of claims 1, 11-15, 23, 28 under 35 U.S.C. 102(b) as being anticipated by Ona et al (4,450,152) is withdrawn in view of the amendment of 9/12/05.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

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4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claims 1, 11, 20, 23, 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ona et al (4,450,152) in view of Kim et al (6,329,472).**

Ona et al teach compositions to groom hair. Ona states hair is easily damaged mechanically by combing, brushing, and washing. Ona teaches the drawbacks of the prior art such as dimethylpolysiloxane and organopolysiloxane-polyoxylalkylene block copolymers. Dimethylpolysiloxane causes dust to stick in the hair and organopolysiloxane-polyoxylalkylene block copolymers tends to be easily removed during swimming and washing. See column 1, lines 40-50. Ona teaches organopolysiloxane of the invention provides glossiness, suppleness, smoothness, and moist feeling while providing durability. See column 1, lines 60-65.

The organopolysiloxane is used in an amount of 0.01-10%. See column 3, lines 55-60. The organopolysiloxane may be dissolved in an aqueous solution or organic solvents such as alcohols, esters, ketones, and aromatics. See column 3, lines 60-65. The organopolysiloxane can be used in shampoos, rinses, hair oils, hair lotions, etc. see column 4, lines 5-10.

Specifically example 2 discloses a composition containing 4 parts of organopolysiloxane (oil agent) and 96 parts of n-pentane (solvent). It should be noted that organopolysiloxane reads on the silicone oils recited in the Markush group.

The method comprises the following steps: (I) Hair is immersed in the composition, (II) the hair is dried with a hair dryer after 30 minutes, and (III) the lock of hair is then washed with soap. The effect of the composition with regard to glossiness, suppleness, smoothness, and moist feeling, before and after shampooing the hair is investigated and noted on column 7.

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Although Ona teaches the use of organic solvents such as alcohols, Ona does not specifically teach lower alcohols having 1-6 carbons.

Kim teaches water-soluble or water-dispersible graft copolymers for the hair. See abstract. Kim teaches the use of customary organic solvents such as **ethanol** (2C), **isopropanol** (3C), n-propanol, **n-pentane**, etc. in an amount of. 0-95%. See column 6, lines 15-20.

It would have been obvious for one of ordinary skill in the art at the time the invention was made to combine the teachings of Ona et al and Kim et al and substitute Ona's organic solvent n-pentane for the instant lower alcohol. One would have been motivated to do so since Kim teaches ethanol (2C), isopropanol, (3C), and n-pentane are conventional organic solvents utilized in hair compositions. Thus, one would have expected success by utilizing the instant organic solvent in Ona's composition since the prior art teaches n-pentane and the instant lower alcohols are functional equivalents in that they are used for the same purpose (as organic solvents) and in the same field of endeavor (hair compositions). Therefore, it is considered prima facie obvious to utilize an art recognized functionally equivalent solvent in Ona, absent a showing of unexpected results of the instant solvents versus the prior art's solvent. Furthermore, one would have expected similar results since Ona teaches the organopolysiloxane may be dissolved in organic solvents such as alcohols.

It should be noted that although Ona does not explicitly state that the hair is dry before immersing the hair in the composition, it is the examiner's position that this is an implicit teaching of example 2 since Ona does not teach wetting or dampening the hair prior to immersing the hair in the composition. Lastly although Ona does not use the term conditioning,

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Ona teaches providing smoothness, moist feeling, etc. by using the composition and this reads on applicant's "method of conditioning hair".

***Response to Arguments***

Applicant's arguments with respect Ona have been considered but are moot in view of the new ground(s) of rejection necessitated by the amendments of 9/12/05. However, since the examiner has retained Ona as a prior art reference, the examiner will address the pertinent arguments.

Applicant argues Ona fails to disclose a method of conditioning the hair wherein the composition is applied to dry hair, allowed to stand for 3-120 minutes, and then washed away. Applicant's arguments filed have been fully considered but they are not persuasive. As set forth in the rejection, the examiner points out to example 2, which reads on the instant method claim. Example 2 discloses a composition containing 4 parts of organopolysiloxane (oil agent) and 96 parts of n-pentane (solvent). Hair is immersed in the composition and after 30 minutes, the hair is dried using a hair dryer (the heat application step). The lock of hair is then washed with soap.

Applicant argues that Ona does not teach a method of conditioning the hair.

The examiner points out that the instant specification teaches that the hair composition provides an improved feel such as freedom from stickiness, smoothness, moist feel on page 8, which applicant previously argued is implicit support for conditioning the hair. The examiner points out that Ona also teaches the hair grooming composition provides glossiness, suppleness, smoothness, and moist feeling. Thus, it is the examiner's position that Ona reads on a method of conditioning hair.



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**Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ona et al (4,450,152) in view of Kim et al (6,329,472) in further view of Andersin (GB 824,353).**

As set forth in detail above, Ona et al teach compositions to groom hair. Ona states hair is easily damaged mechanically by combing, brushing, and washing. Ona teaches organopolysiloxane of the invention provides glossiness, suppleness, smoothness, and moist feeling while providing durability. See column 1, lines 60-65. The organopolysiloxane is used in an amount of 0.01-10%. See column 3, lines 55-60. The organopolysiloxane may be dissolved in an aqueous solution or organic solvents such as alcohols, esters, ketones, and aromatics. See column 3, lines 60-65. The organopolysiloxane can be used in shampoos, rinses, **hair oils**, hair lotions, etc. see column 4, lines 5-10. The method comprises the following steps: (I) Hair is immersed in the composition, (II) after 30 minutes, the hair is dried with a hair dryer (the heat application step), and (III) the lock of hair is then washed with soap. The effect of the composition with regard to glossiness, suppleness, smoothness, and moist feeling, before and after shampooing the hair were investigated and noted on column 7.

As set forth in detail above, Kim teaches the use of customary organic solvents such as **ethanol** (2C), **isopropanol** (3C), n-propanol, **n-pentane**, etc. in an amount of. 0-95%. See column 6, lines 15-20.

The references do not teach covering the hair while the hair is treated.

Andersin teaches hair oil containing oil and an alcohol for hair improvement. Andersin teaches that hair oil is rubbed into the scalp and wrapped in a scarf to allow the oil to penetrate the scalp without disturbance as long as possible. After this, the hair must be washed and rinsed to provide hair that has new life and is elastic. See column 1.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Ona et al, Kim et al, and Andersin and cover the hair while the hair is treated with the Ona's composition. One would have been motivated to do so since Andersin teaches covering the hair allows the oil to penetrate the scalp without disturbance. Thus, a skilled artisan would have been motivated to cover the hair to allow the oil contained in Ona's composition, to penetrate and provide a deeper conditioning effect.

**Claims 3 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ona et al (4,450,152) in view of Andersin (GB 824,353).**

As set forth in detail above, Ona et al teach compositions to groom hair. Ona states hair is easily damaged mechanically by combing, brushing, and washing. Ona teaches organopolysiloxane of the invention provides glossiness, suppleness, smoothness, and moist feeling while providing durability. See column 1, lines 60-65. The organopolysiloxane is used in an amount of 0.01-10%. See column 3, lines 55-60. The organopolysiloxane may be dissolved in an aqueous solution or organic solvents such as alcohols, esters, ketones, and aromatics. See column 3, lines 60-65. The organopolysiloxane can be used in shampoos, rinses, **hair oils**, hair lotions, etc. see column 4, lines 5-10. The method comprises the following steps: (I) Hair is immersed in the composition, (II) after 30 minutes, the hair is dried with a hair dryer (heat application step), and (III) the lock of hair is then washed with soap. The effect of the composition with regard to glossiness, suppleness, smoothness, and moist feeling, before and after shampooing the hair were investigated and noted on column 7.

Ona does not teach covering the hair while the hair is treated.

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Andersin teaches hair oil containing oil and an alcohol for hair improvement. Andersin teaches that hair oil is rubbed into the scalp and wrapped in a scarf to allow the oil to penetrate the scalp without disturbance as long as possible. After this, the hair must be washed and rinsed to provide hair that has new life and is elastic. See column 1.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Ona et al and Andersin and cover the hair while the hair is treated with the Ona's composition. One would have been motivated to do so since Andersin teaches covering the hair allows the oil to penetrate the scalp without disturbance. Thus, a skilled artisan would have been motivated to cover the hair to allow the oil contained in Ona's composition, to penetrate and provide a deeper conditioning effect.

**Claims 1, 11, 16-17, 19, 20, 22-24, 28, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Komori et al (5,342,611) in view of Okumura et al (4,402,936).**

Komori et al teach a hair cleansing composition that cleanses the hair and provides good feeling upon use. See column 1, lines 10-15. The composition generally contains 0.05-15% a surfactant, 0.5-40% of an alcohol, 0.1-25% water, and 20-98% of a liquid oil. See abstract. The alcohols taught are glycerol, glycols, propylene glycol, ethanol, butylene glycol, etc. see column 2, lines 50-57. The oils taught are liquid paraffin, fatty acids, triglycerides, diglycerides, silicon compounds, isopropyl myristate, and fatty alcohols. The oils are used solely or in combination. See column 3, lines 1-15 and column 4, lines 50-60. Moreover, Komori teaches glycerol diesters of one or two fatty acids such as squalane, 2-ethyl cyclohexane acid, myristic acid, oleic acid, and isostearic acid; glycerol triester of one or two fatty acids such as 2-ethyl cyclohexane acid, myristic acid, oleic acid, and isostearic acid; octyldodecyl myristate; and isopropyl myristate.

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See column 4, lines 45-60. Note that glycerol triester of one or two fatty acids of 2-ethyl cyclohexane acid reads on the oil component claimed in claim 17. Further, isopropyl palmitate is utilized in the examples.

Komori teaches massaging the hair composition into the scalp hair. The oils liberate or dissolve the dirt on the scalp/hair. This is followed by rinsing the hair with a lot of water to wash the composition out. The composition provides for a good feeling upon use. See column 5, lines 14-30. Specifically a composition is in the form of a preshampoo is taught. . Further, the preshampoo conditions the hair so as the enable one to shampoo long and wavy hair without tangling. See example 5. It should be noted that it is the examiner's position that Komori's disclosure that the composition provides "good feeling" and tangle free hair reads on applicant's "method of conditioning the hair".

Komori does not specify how long the composition is kept in the hair.

Okumura et al teach a preshampoo hair treating composition for conditioning the hair. Okumura states that preshampoos comprising oils and fats have gained favor since it prevents damage to the hair during hair washing and finishing, thus imparting a conditioning effect to the washed hair to give the hair an improved look. The treating agent is applied to the hair and washed according to conventional practices. See column 1, lines 30-45. More specifically, Okumura teaches that a hair was coated with 2g of a preshampoo and letting it stand for five minutes, followed by washing. See column 4. Lastly, claim 4, Okumura makes the implicit teaching of applying a preshampoo to dry hair, explicit by stating in claim 4 that the composition is applied to dry hair.

It would have been obvious at the time the invention was made to combine the teachings of Komori et al and Okumura et al and leave the preshampoo in for the instant length of time. Firstly one would have been motivated to leave the preshampoo in the hair for the instant amount of time since Okumura et al teaches leaving a preshampoo composition in the hair for the instant length of time to condition the hair. Thus, a skilled artisan would have been motivated to leave the composition in the hair to increase its conditioning benefits and allow the hair to absorb the composition. Further, the length of time would depend on factors such as the severity of damage to the hair, the amount of conditioning desired, and the consumer's willingness and desire to keep the composition in the hair. Secondly, it should be noted that although it is implicit that a preshampoo is applied to dry hair, Komori does not explicitly state applying the composition to dry hair. Thus, the examiner relies on Okumura to also explicitly teach what is implicit in Komori, i.e. the conventional practice of applying preshampoos to dry hair.

It should be noted that Komori's weight percent of alcohol, water, and oil overlap with the instantly claimed weight percents. With regard to Komori's use of a surfactant, it should be noted that for the purpose of applying prior art under 35 U.S.C. 102 and 103, absent a clear indication in the specification or claims of what the basic and novel characteristics actually are, "consisting essentially of" will be construed as equivalent to "comprising." See MPEP 2111.03.

### ***Response to Arguments***

Applicant's arguments filed 9/12/05 and arguments presented 7/27/05 have been fully considered but they are not persuasive.

Applicant argues that while Komori et al teach overlapping ranges, Komori does not exemplify all the instant embodiments. For instance, applicant argues that Komori teaches an oil

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agent in the amount of 20-98% but teaches a preferred concentration of 50-98%. Applicant argues there is not motivation to apply the composition as a preshampoo wherein the composition is applied to dry hair, followed by washing.

Firstly, the examiner points out that the instant rejection is made under obviousness and not under anticipation. Therefore, the instant invention need not be exemplified; it merely has to be suggested. The instant invention requires an oil agent in the amount of 0.5-25%, a solvent, and 0-15% water. Komori teaches a composition containing 0.05-15% of a surfactant, 0.5-40% of an alcohol, 0.1-25% water, and 20-98% of an oil. Therefore, it is quite clear that the instant ranges are suggested

With regard to Komori's preferred embodiments of 50-98% oil, the examiner points out that disclosed examples and preferred embodiments do not constitute a teaching away from the broader disclosure or nonpreferred embodiments. See *In re Susi*, 440 F.2d 442, 169 USPQ 423 (CCPA 1971). Thus, the instant claims require oil in a concentration of 0.5-25% and since Komori teaches 20-98%, Komori's minimum concentration of 20% falls within the claimed range and renders the instant invention *prima facie* obvious. . It should be noted that the applicant has not argued *unexpected results* to overcome Komori. The examiner suggests submitting unexpected results to establish the unexpectedness of the instant weight percents to overcome Komori et al.

With regard to Komori's lack of teaching of the instant methodology, the examiner points to column 5 wherein Komori teaches applying the composition to the hair and scalp and subsequent massaging of the composition to loosen the dirt, which is then followed by washing the hair to remove the dirt. Thus, it is the examiner's position that this reads on applicant's

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methodology. Further, the examiner also relies on Okumura to explicitly teach what is implicit in Komori, i.e. the use of a preshampoo on dry hair.

With regard to applicant's assertion that Komori does not teach a *method of conditioning the hair*, the examiner points out that Komori teaches that the composition provides "a good feeling upon use". Further, Komori states that inefficient removal of dirt from the scalp causes problems such as loss of hair gloss, hair splitting, rough hair, and tangling of hair. See column 1, lines 34-39. Thus, Komori teaches the composition removes dirt but is mild to the scalp and hair, thus having a "good feeling upon use." Additionally, column 6 wherein the composition is evaluated and Komori notes that the composition provides the hair with a smooth feel, the hair is tangle free, and not sticky. Therefore, Komori's composition, which provides smooth feel and tangle free hair is implicit for conditioning the hair.

Applicant argues that that although Okumura et al teach a preshampoo composition, the references do not teach the instant composition.

The examiner points out that once again, that the claims are made under obviousness and thus a secondary reference is relied upon for its *specific* teaching and it does not have to teach the entire invention; otherwise it would be said to anticipate the invention. In instant case, the examiner relies on Okumura to teach the preshampoo art and not the composition itself.

**Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Komori et al (5,342,611) in view of Okumura et al (4,402,936) in further view of Yui et al (5,747,016).**

As set forth in detail above, Komori et al teach a hair cleansing composition that cleanses the hair and provides good feeling upon use. See column 1, lines 10-15. The composition generally contains A) 0.05-15% a surfactant, B) 0.5-40% of an alcohol, C) 0.1-25% water, and

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D) 20-98% of a liquid oil. See abstract. The alcohols taught are glycerol, glycols, propylene glycol, ethanol, butylene glycol, etc. see column 2, lines 50-57. The oils taught are liquid paraffin, fatty acids, triglycerides, diglycerides, silicon compounds, isopropyl myristate, and fatty alcohols. The oils are used solely or in combination. See column 3, lines 1-15 and column 4, lines 50-60. Moreover, Komori teaches glycerol diesters of one or two fatty acids such as squalane, 2-ethyl cyclohexane acid, myristic acid, oleic acid, and isostearic acid; glycerol triester of one or two fatty acids such as 2-ethyl cyclohexane acid, myristic acid, oleic acid, and isostearic acid; octyldodecyl myristate; and isopropyl myristate. See column 4, lines 45-60. Note that glycerol triester of one or two fatty acids of 2-ethyl cyclohexane acid reads on the oil component claimed in claim 17. Further, isopropyl palmitate is utilized in the examples.

As set forth in detail above, Okumura et al teach the use of a preshampoo conditioner for at least 5 minutes.

Although Komori teaches the use of polyols including propylene glycol, Komori does not specify instant dipropylene glycol.

Yui et al teach organopolisiloxane for the hair. Yui teaches examples of polyols include glycerol, propylene glycol, dipropylene glycol, sorbitol, etc. See column 11, lines 25-30.

It would have been obvious for one of ordinary skill in the art at the time the invention was made to combine the teachings of Komori et al, Okumura et al, and Yui et al and utilize the instant solvents in Komori. One would have been motivated to do with the expectation of similar results since Komori teaches polyols in general may be used as the alcohol in the composition and Yui teaches dipropylene glycol falls within the genus polyols.



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**Claims 2-5, 25, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Komori et al (5,342,611) in view of Okumura et al (4,402,936), in further view of Priest et al (4,296,763).**

As set forth in detail above, Komori et al teach a hair cleansing composition that cleanses the hair and provides good feeling upon use. See column 1, lines 10-15. The composition generally contains 0.05-15% a surfactant, 0.5-40% of an alcohol, 0.1-25% water, and 20-98% of a liquid oil. See abstract. The alcohols taught are glycerol, glycols, propylene glycol, ethanol, butylene glycol, etc. see column 2, lines 50-57. The oils taught are liquid paraffin, fatty acids, triglycerides, diglycerides, silicon compounds, isopropyl myristate, and fatty alcohols. The oils are used solely or in combination. See column 3, lines 1-15 and column 4, lines 50-60. Moreover, Komori teaches glycerol diesters of one or two fatty acids such as squalane, 2-ethyl cyclohexane acid, myristic acid, oleic acid, and isostearic acid; glycerol triester of one or two fatty acids such as 2-ethyl cyclohexane acid, myristic acid, oleic acid, and isostearic acid; octyldodecyl myristate; and isopropyl myristate. See column 4, lines 45-60. Note that glycerol triester of one or two fatty acids of 2-ethyl cyclohexane acid reads on the oil component claimed in claim 17. Further, isopropyl palmitate is utilized in the examples.

As set forth in detail above, Okumura et al teach the use of a preshampoo conditioner for at least 5 minutes.

The references do not teach warming the hair while the hair is covered.

Priest et al teach a hair conditioning composition contained in a heating cap. The composition contains oil and other components. See column 2, lines 3-14. Priest teaches the use of temperatures in the excess of 125 degrees Fahrenheit allow the oils such as olive oil or

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synthetic oils to penetrate the hair. See column 2, lines 15-17. Thus, when the hair is washed, the residual oil promotes luster, improves hair condition, and allays irritation. See column 3, lines 23-32.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of the reference and cover the hair and use the instant temperature to treat the hair. One would have been motivated to do so since Priest et al teach that a temperature in the excess of 125 degrees Fahrenheit allow oils to penetrate the hair shaft. Thus, a skilled artisan would have been motivated to use heat to allow the oils in Komori's composition to penetrate the hair, thereby providing deep conditioning of the hair.

**Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Komori et al (5,342,611) in view of Okumura et al (4,402,936), in further view of Priest et al (4,296,763) in further view of Yui et al (5,747,016).**

As set forth in detail above, Komori et al teach a hair cleansing composition that cleanses the hair and provides good feeling upon use. See column 1, lines 10-15. The composition generally contains 0.05-15% a surfactant, 0.5-40% of an alcohol, 0.1-25% water, and 20-98% of a liquid oil. See abstract. The alcohols taught are glycerol, glycols, propylene glycol, ethanol, butylene glycol, etc. see column 2, lines 50-57. The oils taught are liquid paraffin, fatty acids, triglycerides, diglycerides, silicon compounds, isopropyl myristate, and fatty alcohols. The oils are used solely or in combination. See column 3, lines 1-15 and column 4, lines 50-60. Moreover, Komori teaches glycerol diesters of one or two fatty acids such as squalane, 2-ethyl cyclohexane acid, myristic acid, oleic acid, and isostearic acid; glycerol triester of one or two fatty acids such as 2-ethyl cyclohexane acid, myristic acid, oleic acid, and isostearic acid;

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octyldodecyl myristate; and isopropyl myristate. See column 4, lines 45-60. Note that glycerol triester of one or two fatty acids of 2-ethyl cyclohexane acid reads on the oil component claimed in claim 17. Further, isopropyl palmitate is utilized in the examples.

As set forth in detail above, Okumura et al teach the use of a preshampoo conditioner for at least 5 minutes.

As set forth in detail above, Priest et al teach using a heating cap to allow oil to penetrate the hair and improve its condition.

Although Komori teaches the use of polyols including propylene glycol, Komori does not specify instant dipropylene glycol or benzyloxyethanol.

Yui et al teach organopolisiloxane for the hair. Yui teaches examples of polyols include glycerol, propylene glycol, dipropylene glycol, sorbitol, etc. See column 11, lines 25-30.

It would have been obvious for one of ordinary skill in the art at the time the invention was made to combine the teachings of Komori et al, Okumura et al, and Yui et al and utilize the instant solvents in Komori. One would have been motivated to do with the expectation of similar results since Komori teaches polyols in general may be used as the alcohol in the composition and Yui teaches dipropylene glycol falls within the genus polyols.

### ***Conclusion***

All the claims are rejected at this time.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharmila S. Gollamudi whose telephone number is 571-272-0614. The examiner can normally be reached on M-F (8:00-5:30), alternate Fridays off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz can be reached on 571-272-0887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Examiner  
Art Unit 1616

SSG

